

National Employment Law Project

More Harm Than Good: Responding To States' Misguided Efforts To Regulate Immigration

September 2007



**National
Employment
Law Project**

About the National Employment Law Project

National Employment Law Project (NELP) fights for working families to ensure that America's changing economy delivers for today's workforce. In partnership with communities, NELP works to protect and foster good jobs supporting a decent livelihood. NELP promotes policies advancing economic opportunity for all of America's workers, enforces hard-won workers' rights, and helps jobless workers reconnect to America's promise of economic progress.

In particular, NELP seeks equal labor protections of all workers as a matter of national policy, in order to respect workers' human rights and reduce the incentive for unscrupulous employers to hire and exploit the undocumented.

To learn more, visit NELP's website at <http://www.nelp.org>.

Table of Contents

Introduction	4
Part One: What's Wrong	5
....With the assumptions behind anti-immigrant bills?	
....With State employer sanctions provisions?	9
....with legislation requiring state agencies to assist in enforcement of immigration law?	11
... With excluding undocumented workers from workers' compensation coverage?	12
Part Two: Try Instead: State Employer Sanctions Policies that Work for all Working People	14
One: Shut down the sweatshops	15
Two: Mandate "immigration status blind" labor and employment law, policy and law enforcement.	17
Three: Beef up health and safety protections for all workers.	18
Four: Limit employer participation in electronic verification programs to avoid discrimination.	19
Five: A state resolution or local ordinance in favor of comprehensive immigration reform	20
Model Policies	21
Further Resources	25

Introduction

Recent state and local policy makers have seen a large number of legislative proposals ostensibly aimed at punishing employers who hire undocumented workers. These have ranged from state-level employer sanctions bills, legislation requiring employers of immigrants to register and pay fees, taxes for employers of “aliens,” proposals to deny workers’ compensation to certain immigrants, and proposals requiring state agencies to act as arms of Immigration and Customs Enforcement (ICE).

While frustration with the slow pace of immigration reform is understandable, these state proposals miss the mark. They duplicate a policy that is a proven failure at the national level. Employer sanctions laws in effect since 1986 have not solved the problem of undocumented migration. Instead, they have resulted in increased discrimination against workers who are perceived to be “foreign,” and have often been used by employers as a tactic to rid themselves of workers who speak up about labor problems.

States would do well not to adopt their own versions of this disastrous program. In many instances, since immigration is a matter of federal law, state laws will be held pre-empted by federal law. State-level employer sanctions will drive already vulnerable workers underground. They will deter immigrant victims of rampant labor law violations from coming forward, and that will affect the many workplaces where undocumented immigrants labor alongside other immigrants and citizen workers. Such laws will divert scarce state and local resources away from activities that benefit local communities. Finally, proposals that leave immigrant workers less protected than other workers will create perverse incentives for unscrupulous employers. The employer sanctions proposals being introduced in the states will make the situation worse, not better.

What can states do to make sure that employers who violate the law are effectively sanctioned?

There is a need for more effective enforcement of labor and employment rights to eliminate exploitation of immigrant workers and unfair competition against good employers. Scoff-law employers win out when the costs of cutting corners on labor and employment protections are low. Employers cut costs when they are able to violate the labor and employment rights of immigrant workers without consequences. The premise of this guide is that this is the problem that needs urgently to be addressed.

This guide provides some affirmative proposals of steps states can take to ensure that employers are complying with state labor and employment laws and that workers are not being exploited. It suggests ways in which states can draw on their best assets—their local communities—to identify the bad actor employers and shut down the sweatshops they operate. It shows how states have succeeded in creating a firewall between labor law enforcement and immigration law enforcement, so that state agencies get the information that they need to crack down on labor law violators. Finally, it highlights creative strategies for sanctioning employers who use immigrants status as a club against workers who fight workplace abuse.

Many state anti-immigrant bills have been introduced that target use of public services, voting, drivers’ licenses and other issues. Resources available to help communities facing these issues are available in the appendix.

PART ONE: What's Wrong?

...With the assumptions behind anti-immigrant bills? Many state bills begin with a negative set of assumptions about immigration and immigrants that have been drafted by groups opposed to immigration. The assumptions underlying the bills, and appearing in "WHEREAS" provisions, are often unsupported by the facts.

Community leaders have changed their minds about these bills when they were educated about the contributions of immigrants to the American economy. The City of Avon Park, Florida, rejected an anti-immigrant provision after evidence was presented that immigrants had contributed to the [economy](#), and that population, school crowding and crime rates — all bugaboos of immigration restrictionists — had gone down as immigrant workers moved to the city.

At least one federal judge has questioned these assumptions as well, and entered an order prohibiting the City of Hazelton, Pennsylvania, from enforcing its anti-immigrant ordinance. In that case, the judge questioned a vague assertion that immigrants contribute to crime, countered by specific statistics showing a drop in crime rate in recent years. *Lozano v. City of Hazelton*, No. 3:06 CV 1586 (M.D. Pa, 2006). In a July 2007 opinion, Judge James Munley said that laws denying business licenses to employers who have hired undocumented workers were pre-empted by federal employer sanctions laws, since denying a business license is the "ultimate" employer sanction. At least three other local ordinances have been enjoined. See, *Stewart v. Cherokee Country, GA*, No. 07 CV 0015 (N.D. GA, January 4, 2007); *Garrett v. City of Escondido*, No 06 CV 2434 JAH (S.D. CA December 15, 2006); *Vasquez v. City of Farmer's Branch*, No. 3-deCV2376-R, (N.D. TX January 11, 2007); *Reynolds v. City of Valley Park, MO*, No. 06-CC-3802 (St. Louis County Cir Ct., September 27, 2006).

The Facts: Immigrants produce wealth in our economy and society.

- In 2001, the UCLA North American Integration and Development Center conservatively estimated that "the current levels of undocumented migration from Mexico (3 million workers) represent a contribution of \$154 billion to the Gross Domestic Product of the United States, including \$77 billion to the Gross State Product of California." R. Hinojosa Ojeda, *Comprehensive Migration Policy Reform in North America: The Key to Sustainable and Equitable Economic Integration*, North American Integration and Development Center, University of California, Los Angeles (2001), at 5.
- A study published by the Center for Urban Economic Development of the University of Illinois at Chicago determined that in the Chicago metro area, "the direct, indirect, and induced spending of undocumented workers accounts for a total of \$5.45 billion spent annually in the metro area economy, or 1.5% of the Gross Regional Product for 2001," and that "[t]his spending generates 31,908 additional jobs in the local economy." Chirag Mehta, Nik Theodore, Iliana Mora & Jennifer Wade, *Chicago's Undocumented Immigrants: An Analysis of Wages, Working Conditions, and Economic Contributions* (Feb. 2002), at 34.
- Most studies find that immigration is, and will continue to be, vital to meet our growing economy over the next fifteen years, when "baby-boomers" are retiring. Immigration is critical to sustaining the vitality of the US economy. *Immigration and America's Future: A New Chapter*, Report of the Independent Task Force on Immigration and America's Future, (Migration Policy Institute 2006).

Immigration and the Social Security system. The contributions of immigrant workers are responsible for keeping the Social Security trust funds afloat. The Social Security Administration (SSA) has concluded that undocumented immigrants “account for a major portion” of the billions of dollars paid into the Social Security system under names or social security numbers that don’t match SSA records and which payees therefore can never draw upon. As of July 2002, these payments totaled \$374 billion. Office of the Inspector General, Social Security Administration, *Obstacles to Reducing Social Security Number Misuse in the Agriculture Industry* (Report No. A-08-99-41004), January 22, 2001. Office of the Inspector General, Social Security Administration, *Follow-Up Review of Employers with the Most Suspended Wage Items* (Report No. A-03-03-13026), October 30, 2003.

The Facts: State data on the contributions of immigrants:

In recent years, groups as diverse as the Texas Comptroller General and the Colorado Bell Policy Center have conducted their own state-level studies on the impact of immigrants on their economy. They have reached similar conclusions:

“The absence of the estimated 1.4 million undocumented immigrants in Texas in fiscal 2005 would have been a loss to our gross state product of \$17.7 billion. Undocumented immigrants produced \$1.58 billion in state revenues, which exceeded the \$1.16 billion in state services they received. ”

Texas Office of the Comptroller, *UNDOCUMENTED IMMIGRANTS IN TEXAS: A Financial Analysis of the Impact to the State Budget and Economy* (December 2006)

- **In Georgia it has been estimated that the aggregate sales, income and property tax contribution of undocumented immigrants was between \$215.6 million and \$252.5 million** Sarah Beth Coffey, *Undocumented Immigrants in Georgia: Tax Contribution and Fiscal Concerns*, Georgia Budget and Policy Institute, 2006
- **In Oregon, it has been estimated that undocumented immigrants paid between \$66 million and \$77 million in property taxes, state income taxes, and excise taxes.** Oregon Center for Public Policy, Issue Brief: *Undocumented Workers Are Taxpayers Too* , April 2006.
- **In Missouri, it has been estimated that undocumented immigrants paid between \$29 and \$57 million in property taxes, state income taxes and excise taxes.** Ruth Ehresman, *Undocumented Workers: Impact on Missouri's Economy*, Missouri Budget Project, June 2006.

- **In New Mexico, it has been estimated that undocumented immigrants paid between \$47.085 - \$69.260 million in state taxes.** New Mexico Fiscal Policy Project, *Undocumented Immigrants in New Mexico: State Tax Contributions and Fiscal Concerns*, May 2006.
- **In Colorado, it has been estimated that undocumented immigrants paid between \$159-\$194 million a year in state and local taxes.** Rich Jones and Robin Baker, *Costs of Federally Mandated Services to Undocumented Immigrants in Colorado* Bell Policy Center, June 2006.

The Facts: Immigrants and Jobs.

While immigrant workers are often blamed for “stealing” jobs from American workers, in fact, immigrants tend to complement, rather than compete with, the U.S. workforce.

While it is true that there is a large—and growing—income gap between high-wage, high-skilled workers and low-wage, lower-skilled workers, many studies continue to find no effect from the presence of immigrant workers on workers in general. Some have found weak negative effects of immigration on low-skilled workers.

One study of immigrants arriving between 1985 and 1990 found little evidence to suggest that immigrant inflows had negative impacts on low-skilled native workers in major US cities. Another study, using 2000 Census data, reaffirmed this finding: no strong relationship between immigration and the wages of low skilled workers. The presence of Mexican immigrants in particular, who account for approximately 30 percent of all immigrants in the United States, had little effect on the relative wages of native men who did not finish high school. July Murray, et.al., *The Impact of Immigration on Native Workers: A Fresh Look at the Evidence*, Migration Policy Institute (July 2006).

- During the 1990-2004 period of high immigration levels, among the 90 percent of native-born workers with at least a high-school diploma, wage increases ranged from 6.5 percent to 21.5 percent, depending on education. While wages of some unskilled workers declined, it is not clear how much of that decline was due to other forces beyond immigration (such as trade). Giovanni Peri, *Rethinking the Effects of Immigration on Wages: New Data and Analysis from 1990-2004*, Immigration Policy In Focus (October 2006).
- By most accounts, new immigrant populations have contributed to economic revitalization in areas like L.A. and New York, hard hit by de-industrialization in the 1970s and 1980s. David Halle, Robert Gordon, and Andrew Beridge, “Residential Separation and Segregation, Racial and Latino Identity, and Racial Composition of Each City,” in David Halle, *New York and Los Angeles: Politics, Society, and Culture a Comparative View*, Chicago, University of Chicago Press, 2003.
- A recent study finds that shutting down our nation’s borders would affect our gross domestic product negatively, but not affect the wages of most Americans. But legalizing existing migrants creates large gains for the US (0.6% of GDP). Raul Hinojosa Ojeda, *North American Competitiveness and Labor Market Interdependence*, North America Integration and Development Center (2007).

What's Wrong?

...with the cost of anti-immigrant legislation?

States that go down the road of enacting state-level employer sanctions and other provisions may find that they are spending precious resources wastefully. In 2006, the State of Colorado passed a series of bills that its legislature touted as the toughest anti-illegal immigration legislation in the nation. The new laws were meant to deny public services to undocumented immigrants unless required under federal law, create a new penalty for use of fraudulent documents, enroll all state departments in the federal Basic Pilot program, and require state police to enforce immigration laws.

A year later, eighteen state departments have reported they have spent a total of \$2.03 million on implementation of the new laws. The number of undocumented immigrants that they have identified? — None. Mark P. Couch, *Pricey Immigration Law, State Agencies, \$2 million cost and no savings*, DENVER POST, January 25, 2007. Here are the costs broken down by agency, for those agencies reporting:

Agriculture: at least \$300

Health Care Policy and Financing: \$87,287

Human Services - County Administrative Services: \$173,000

Human Services - Old Age Pension: \$101,557

Human Services - Alcohol & Drug Abuse: \$24,900

Human Services - Low-Income Energy Assistance Program: \$52,254.56

Human Services - CBMS: \$23,377

Labor and Employment: \$374,828

Law: no more than \$300

Natural Resources: possibly \$368,059

Public Health and Environment: \$73,362

Regulatory Agencies: \$378,107

Revenue: \$372,533

Information for some departments was not available.

Likewise, a fiscal impact statement in New Mexico recently found that implementing REAL ID (A federal law that would deny driver's licenses to many immigrants) would cost the state of New Mexico \$37 million over a five-year period. *Fiscal Impact Report*, January 31, 2007, at <http://legis.state.nm.us/Sessions/07%20Regular/firs/SJM011.pdf>.

... with state level employer sanctions provisions?

What's Wrong

....with State Employer Sanctions Provisions?

matter of federal law. That law expressly prohibits states from imposing civil or criminal penalties for employers who hire undocumented workers. It also prohibits employers from requesting "more or different" documents than those specified in the statute when evaluating a worker's immigration status, and states have no authority to change this list. Some state proposals penalize employers who unknowingly hire undocumented workers, while federal law only allows penalties against employers who "knowingly" violate the law. In the Hazelton, Pennsylvania decision, the judge found that the law denying business licenses to employer and allowing U.S. workers who lose their jobs while an employer hires an unauthorized worker to be expressly pre-empted by federal law. It found that the employer sanctions provisions creating liability regardless of whether the employer knew the workers' status (the federal law standard) were also pre-empted. Finally, it found pre-empted a requirement that employers participate in the Basic Pilot program for verification of workers' immigration status. (Under federal law, that program is voluntary).

Many state proposals fall clearly within federal prohibitions, by making new state crimes for hiring of undocumented workers, or by imposing penalties on employers who do so. In the 2007 legislatures, bills in Connecticut, Indiana, Mississippi, Missouri and Montana took this approach.

Federal employer sanctions have made a bad situation worse.

- **Employer sanctions have resulted in discrimination.** Government studies have found that employer sanctions contribute to discrimination against citizens and legal residents who look or sound "foreign." The Commission on Civil Rights stated in its report that "we find clear and disturbing indications that IRCA has caused at least a 'pattern of discrimination,' if not widespread discrimination." *The Immigration Reform and Control Act: Assessing the Evaluation Process* (1989), <http://www.law.umaryland.edu/marshall/usccr/documents/cr12r25z.pdf>. Likewise, the federal General Accounting Office found that 10% of employers in its survey had engaged in unlawful discrimination, and that "widespread discrimination" had occurred. Charles A. Bowscher, Comptroller General of the United States, *IMMIGRATION REFORM: Employer Sanctions and the Question of Discrimination*, Testimony, Committee on the Judiciary, United States Senate, (March 1990), <http://161.203.16.4/d48t13/141005.pdf>.
- **Employer sanctions are ineffective and easily evaded.** Employer sanctions have never been effective as a deterrent to employers hiring of undocumented workers. The current undocumented population totals millions more people than were present in the US when the employer sanctions provisions were originally adopted in 1986. Employers who would abuse undocumented workers have avoided the law by subcontracting their hiring responsibilities to labor contractors, and by hiring undocumented workers without much concern for documentation.
- **Employer sanctions are used by employers to exploit workers.** Since employers rarely face sanction for hiring undocumented workers, they are free to use the prohibition against hiring undocumented workers as a tool. Here's how it works: unscrupulous employers hire undocumented workers. The workers' immigration status suddenly becomes important to the employer when the worker files a claim for unpaid wages or suffers a work-related injury. Then employers claim that the injured worker is not entitled to compensation because he or she is undocumented. If the employer prevails, it has avoided charges for an injury or claim, and also avoided employer sanctions.

- **The law has also contributed to expansion of an “underground economy”** where employers simply hire workers “off the books.” Workers are afraid to report abuse because employers intimidate them and rely on their fear of being reported to the immigration authorities.
- **Examples of use of immigration status to retaliate against workers who speak up about on the job abuse:**
 - ⇒ In Minnesota, a worker who was injured on the job was turned in to the Immigration and Naturalization Service by his employer who then argued that he was not entitled to wage loss benefits in worker’s compensation because of his undocumented status. *Correa v. Waymouth Farms, Inc.*, 664 N.W.2d 324 (2003).
 - ⇒ In California, a worker was turned in to the INS by her employer for filing a claim for unpaid wages and overtime under the FLSA. *Contreras v. Corinthian Vigor Ins. Brokerage Inc.*, 25 F.Supp.2d 1053 (N.D. Cal. 1998).
 - ⇒ *Sure-Tan v. NLRB* is the best-known example of use of immigration status to gain an advantage in a workplace dispute. There, five of seven eligible voters in a successful union election were undocumented. Two hours after the workers voted in favor of union representation, and cursing the workers for having voted for the union, the employer questioned them about their immigration status. He then turned the workers over to the INS. *Sure-Tan*, 467 U.S. 884, 886-87 (1984).

What's Wrong

...with Legislation Requiring State Agencies to Assist in Enforcement of Immigration Law?

Some state legislators have introduced bills that either require local agencies to assist in enforcing immigration law or that prohibit municipalities from enacting or maintaining ordinances preventing local agencies from engaging in enforcement of immigration law. If enacted, these bills would be bad for workers and for states: they will drive already vulnerable workers further underground; they will make it harder for agencies to enforce workplace laws; and they will create additional (unfunded) burdens on state agencies.

State agencies have recognized that community trust is eroded when state agencies become immigration officers. In July 2005, following an immigration raid in which ICE agents had posed as OSHA agents, Allen Mc Neely, the head of the North Carolina Labor Department's Occupational Safety and Health division was strongly critical of that choice, saying that "the ruse eroded trust between the Labor Department and the workers it is trying to keep safe," and further: "We are dealing with a population of workers who need to know about safety," McNeely said. "Now they're going to identify us as entrappers." AP, *State labor officials complain about immigrant arrests*, July 8, 2005.

Smart law enforcement officials understand that they need the cooperation of witnesses and victims in order to fight crime. If witnesses and victims are afraid that law enforcement agents will turn them in to immigration, they will not come forward. If they keep silent, law enforcement's job is made that much harder.

- Newly-elected Governor Deval Patrick of Massachusetts has rescinded his predecessor's plan to train state police to enforce immigration laws, saying that troopers' time is better spent working on other issues. Andrea Estes, *Patrick set to rescind plan for troopers, Opposes use to arrest illegal immigrants*, Boston Glob, December 22, 2006.
- Both INS and the Montgomery County police department understood this when they were trying to track down the Beltway area "sniper" in 2002. This was also the approach taken in the investigations of the September 11 World Trade Center attack.

It would be unfairly burdensome to ask state agents to navigate the complex web of immigration law. Laypeople often believe there is a bright line between U.S. citizenship and undocumented immigrants. There is no such bright line. In addition to citizenship and legal permanent residence (green card holder), our immigration system is an alphabet of visa categories from A to V as well as status as asylee, temporary resident, or temporary protected status. A person can transition from one status to another over time. It would be unfairly burdensome to ask state and local agents to take on the additional responsibility of acting as immigration agents.

What's Wrong

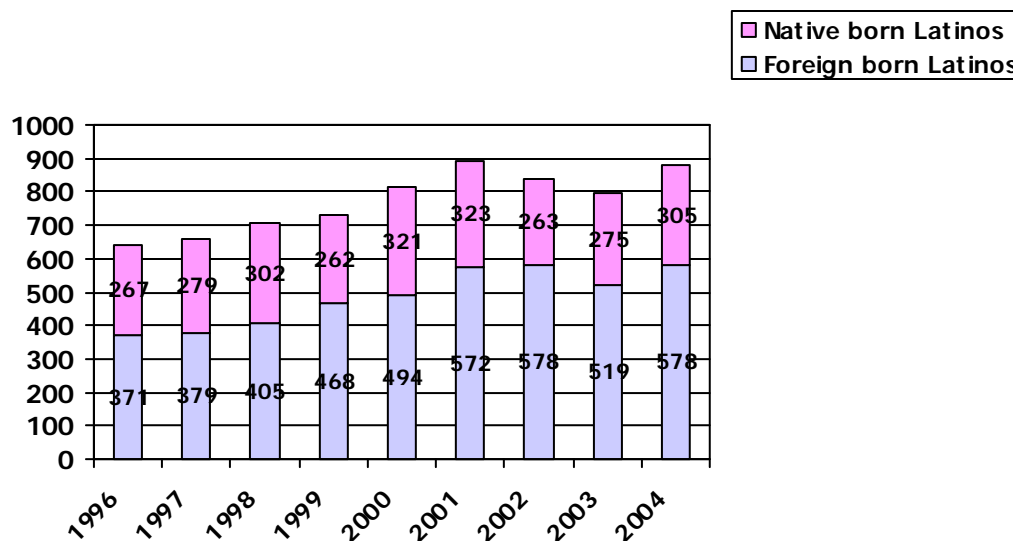
....with excluding undocumented workers from workers' compensation coverage?

In 2006, legislation was introduced (and rejected) in several states (AZ, CO, MD, NJ, SC) that would exclude injured undocumented workers from coverage under worker's compensation. A bill in South Carolina in 2007 took this approach again.

If passed, such laws would be out of step with what the vast majority of states have determined to be the best policy for dealing with the costs of workplace injuries. If enacted, such laws would provide perverse incentives for unscrupulous employers to seek out undocumented workers and cut corners of health and safety measures.

States Should Not Provide Financial Incentives to Ignore Safety and Health. Latino workers, including both immigrant and non-immigrants, suffer fatal workplace injuries at an alarmingly higher rate than other workers in the U.S. workforce.

Fatality Rates of Latino Workers in the United States



(Source: Bureau of Labor Statistics, Monthly Labor Review, October 2005)

A state that excluded undocumented workers from worker's compensation coverage would be out of step with the vast majority of states. Almost all states either explicitly or implicitly include undocumented workers in their statutes.

Worker's compensation is a system that works best if all workers are covered. Workers' compensation schemes represent a compromise way of ensuring that workers have access to relief from the costs of industrial accidents, that employers are protected from the costs associated with liability in tort and that states are not left bearing the burden of caring for indigent injured workers.

When the costs of industrial accidents are disproportionately left to the low-wage workers who suffer injuries, the system does not work. Employers who cut corners on safety and rely on workers' fear of retaliation to avoid liability see a financial advantage to breaking the law. Law-abiding employers, workers and tax-payers pay the price.

Relieving employers of undocumented immigrants from all liability under the labor and employment laws could actually create an incentive for some employers to seek out and exploit undocumented immigrants. If unscrupulous employers are permitted to seek out undocumented workers and then use their immigration status as a shield to escape full responsibility for on-the-job injuries, they will have an unfair advantage over other employers. States should not create financial incentive to ignore health and safety laws.

PART TWO: Try instead... Employer sanctions that work for all working people.

If the goal is to reduce illegal employer behavior, there are better ways at getting at the problem, and to enforce laws protecting all low-wage workers in the bargain. Workers themselves are in the best position to report employer abuse and to help labor officials weed out the low-road employers – but only if they are not afraid of immigration consequences. Here's how we can work together to sanction employers who abuse both citizen and non-citizen working people.

Three Ways to Sanction Abusive Employers:

One: Shut down the sweatshops.

Workplace enforcement of labor standards should be at a level designed to send a message that America will not tolerate non-payment and underpayment of wages. This means more emphasis on enforcement: updated penalty structures, more personnel, and more focus on industries that are known violators of wage and hour laws in construction (including day labor), domestic work, home health care, hotel and restaurant and childcare workers; so that at a minimum, low-wage workers get the wages that they are entitled to under current law.

Companies should not be allowed to evade responsibility by contracting it away to labor brokers. It also means holding accountable worksite employers who use contractors to shield themselves from responsibility or who call their workers "independent contractors."

Two: Mandate "immigration status blind" labor and employment law, policy, and law enforcement.

Immigration status should be entirely irrelevant to whether or not a worker is protected by core labor standards, including protection against discrimination on the job, access to workers' compensation, and ability to exercise freedom of association and bargain collectively. Workplaces with immigrant workers should have the same labor protections as those with only citizen workers, so that employers are not allowed to misuse immigration laws to circumvent their legal obligations.

States should also ensure that they provide access to bilingual employees, that they do not interrogate workers about their immigration status, and that they do not create other artificial barriers to enforcement of immigrant workers' rights.

Three: Beef up health and safety protections for all workers.

Each year in the United States over 5,700 workers are killed on the job, and 4.3 million others become ill or injured. Yet at current staffing levels, it would take Federal OSHA 117 years to inspect the workplaces under its jurisdiction. Penalties for serious violations of the Occupational Safety and Health Act, those that pose a substantial probability of death or serious physical harm, carry an average penalty of only \$883.

Workers should not be forced to work in unsafe conditions. This means more emphasis on targeted sector-specific enforcement, higher penalties for endangering worker health and safety, and stronger protections for those who refuse unsafe work.

Try instead...

ONE: Ways to shut down the sweatshops.

State outreach programs and community partnerships with interfaith, day labor, legal services, consulates and other groups to educate and refer workers.

A highly successful partnership between USDOL and the National Interfaith Committee for Worker Justice performs outreach in immigrant communities, trainings in workers' centers and churches, and negotiates wage payments. When NICWJ cannot resolve a dispute, USDOL takes over. <http://www.nicwj.org/pages/outreach.DOL.html>

A partnership between the Washington State Department of Labor and Industries, CASA Latina Day Labor Center, and the King County Bar Association recruits and trains lawyers and law students who volunteer their time to collect wages owed to day laborers, relying on the state agency when negotiations fail.

Enforcement strategies that focus on misclassification of workers. Misclassification of workers as "independent contractors" is a large and growing problem that denies low-wage workers the protection of labor laws. In 2003, state audits of unemployment insurance systems found an increase of 42% in the number of workers misclassified as independent contractors.

California was the first state to create a "Joint Enforcement Strike Force" to focus on misclassification of workers as "independent contractors." Through this, tax and labor agencies created an "Employment Enforcement Task Force to perform onsite inspections and audits of suspect small companies based on reasonable belief of violations of tax and employment laws. In 2002, the Task Force collected \$74 million in unpaid wages and \$10 million in payroll tax assessments. <http://www.edd.ca.gov/taxrep/txueoindtx.htm#EETF>

Labor agency investigators are in a position to refer important "joint employer" cases to state Attorneys General and to the private bar. Establishment of "joint employer" liability is a powerful tool to protect low-wage workers. The New York Attorney General's office has aggressively pursued wage claims against joint employers, participating in the first modern use of the joint employment theory under New York law against large supermarket and drugstore chains for unpaid wages due to delivery workers misclassified as independent contractors. <http://www.oag.state.ny.us/2000AnnualReport.pdf>

State enforcement policies that are targeted to low-wage work and abusive industries, and that emphasize recovery for the entire workforce (rather than just the complainant). Some state agencies view themselves as the first line of defense against wage abuses for low-wage workers who cannot afford attorneys. Some have targeted industries known for low-wages and high levels of wage violations, such as janitorial, garment, day labor, temporary agencies.

The New York State Attorney General's Office targeted greengrocers for violations of the labor law and ultimately developed an industry code of conduct http://www.oag.state.ny.us/press/2002/sep/sep17a_02.html.

The California Targeted Industries Partnership Program focuses on the apparel, agriculture, restaurant and janitorial services industries. The Construction Enforcement Project focuses on the construction industry. The Janitorial Enforcement Project focuses on the janitorial and building maintenance industry. <http://www.dir.ca.gov/dlse/tipp4.htm>

State or local legislation that authorizes complaints "on behalf of" other workers.

San Francisco's city minimum wage ordinance, authorizes community groups and unions to file complaints, without having to show that the workers not being paid are their members. http://www.ci.sf.ca.us/site/uploadedfiles/oca/living_wage/nw/ordinance.pdf.

State living wage or minimum wage laws that earmark fines recovered from violators to fund new enforcement.

The San Francisco minimum wage ordinance provides for employer fines to be provided to the city in order to offset the costs of investigating and remedying the violation. http://www.ci.sf.ca.us/site/uploadedfiles/oca/living_wage/nw/ordinance.pdf

Try instead...

TWO: Mandate “immigration status blind” labor and employment law, policy, and law enforcement.

Policies affirming a commitment to protecting the labor rights of all workers, without regard to the immigration status, will ensure that workers at all worksites are protected, and that employers of undocumented immigrants don't get a “free pass” on labor law compliance. When immigrant workers feel safe enough to complain, both they and their non-immigrant co-workers benefit.

Reaffirm the state commitment to protect all workers and insure immigrant worker cooperating in worksite investigations..

In September, 2002, a California law was enacted amending the Civil, Government, Health and Safety and Labor Codes and made declarations of existing law. The new law reaffirms that “[a]ll protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment who are or who have been employed, in this state.” http://info.sen.ca.gov/pub/01-02/bill/sen/sb_1801-1850/sb_1818_bill_20020929_chaptered.html

The Director of the *Washington State Department of Labor and Industries* has issued a statement that undocumented immigrants continue to be entitled to both time loss and wage replacement after the *Hoffman* decision:

The 1972 law that revamped Washington's workers' compensation system is explicit: All workers must have coverage. Both employers and workers contribute to the insurance fund. The Department of Labor and Industries is responsible for ... providing workers with medical care and wage replacement when an injury or an occupation disease prevents them from doing their job. The agency has and will continue to do all that without regard to the worker's immigration status. Statement dated May 21, 2002 by Gary Moore, Director, *available at* <<http://www.nelp.org/iwp/reform/state/appendixwadol.cfm>>

The *New York State Attorney General* issued a formal opinion stating that *Hoffman* “does not preclude enforcement of State wage payment laws on behalf of undocumented immigrants.” http://www.oag.state.ny.us/lawyers/opinions/2003/formal/2003_f3.html

Sanction employers who abuse the workers' compensation systems.

In Connecticut in 2007, a bill was introduced that would have made it a criminal offense to hire undocumented workers. What started out as an anti-immigrant piece of legislation became a state law that goes after the real problem of employers who commit workers' compensation premium fraud and cheat workers out of benefits by not carrying compensation at all [and the state fund out of taxes]. The new law, Pub. Act. No. 07-89, provides that employers who misrepresent the number or type of their employees for purposes of the workers' compensation system, can be issued a stop work order and ordered to pay a fine of up to \$1,000. At a hearing on the bill, the workers' compensation commissioner described the problems caused by misclassification of employees as independent subcontractors. Employers worried about unfair competition supported the bill, and both legislative houses passed it unanimously. Read the new law at: <http://www.cga.ct.gov/2007/ACT/PA/2007PA-00089-R00SB-00931-PA.htm>

Try Instead:

THREE: Beef up health and safety protections for all workers.

Pass legislation to enhance state OSHA's enforcement capacity, including earmarking more money for inspectors, enhancing penalties for violations, requiring audits and targeted enforcement for problem sectors and employers, permitting institutions like unions to file complaints on behalf of workers.

Prohibit employer deductions from pay for personal protective equipment, as several states including NY do, but OSHA has failed to do at the national level.

Require materials to be accessible to limited English-speaking workers: In its report on day laborers, GAO suggested that that limited English proficiency made workers less likely to be aware of workplace risks or to communicate risks to employers. GAO-02-925, Worker Protection: Labor's Efforts to Enforce Protections for Day Laborers Could Benefit from Better Data and Guidance (September 2002), at 11.

For example, Iowa and Nebraska have laws requiring translators on the job where more than 10% of the workforce is non-English-speaking. See Iowa Code section 91E.2, at <http://nxtsearch.legis.state.ia.us/NXT/gateway.dll/moved%20code/2005%20Iowa%20Code/1?f=templates&fn=default.htm>

Create a Study Commission with stakeholders to research low-wage immigrant workers' access to health and safety rights and make recommendations. A California Commission released a report covering three interrelated topics and makes recommendations: (1) low-wage workers and the issues they face in accessing the workers' compensation system, (2) prevention efforts in a typical industry that employs low-wage workers; and, (3) the involvement of community health clinics in providing care to injured workers. [Barriers to Occupational Health Services For Low-Wage Workers in California Study](http://www.dir.ca.gov/chswc/chswc.html) - <http://www.dir.ca.gov/chswc/chswc.html>

Prompted by the rising number of injuries and fatalities among immigrant workers in the transportation, construction, agriculture, retail and service industries and organizing by labor and community groups, Illinois Governor Rod Blagojevich appointed a special panel to investigate the high incidence of work related death rates among Hispanic immigrant workers. Creating a Worker Safety Fund to support a collaborative partnership and outreach strategy statewide between community-based organizations and government agencies to, among other things, develop worker safety materials in Spanish and provide health and safety training in Spanish can also reduce accidents.

Involve immigrant communities in the effort. Researchers found that when workers work together in a popular education-based learning system to learn about workplace safety and health, they are both more educated about the issues and more willing to raise these issues with managers. Tobi M. Lippin, Anne Eckman, Katherine R. Calkin, Thomas H. McQuiston, Empowerment-Based Health and Safety Training: Evidence of Workplace Change from Four Industrial Sectors, American Journal of Industrial Medicine 38:697-706(2000) at 698.

Try Instead:

FOUR: Limit employer participation in electronic verification programs to avoid discrimination.

On September 30, 1996, President Clinton signed the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Among its provisions, IIRIRA required the Immigration and Naturalization Service (INS, now the Department of Homeland Security, or DHS) and the Social Security Administration (SSA) to test and evaluate pilot programs for electronic verification of employees' work authorization. The pilot program currently in existence is known as the "Basic Pilot Program."

In 2003, Congress enacted the Basic Pilot Program Extension and Expansion Act of 2003, requiring the Secretary of Homeland Security to expand the (still-voluntary) Basic Pilot to all 50 states and to submit a report on the program to Congress by June 2004. In its report to Congress, DHS identified problems in the SSA and DHS databases as contributing to the problem of excessive rates of tentative non-confirmations for foreign-born workers. While it reports improvements in accuracy, the rates of confirmation for foreign-born work-authorized people are still very low. DHS reports an improvement in SSA confirmation rates for foreign-born non-citizens from 37.2% to only 48.8%. This means that over half of all foreign-born non-citizens, when verified electronically, receive initial non-confirmations. The rate for foreign-born citizens improved from 83.6% to 88.6%. In other words, more than one out of every ten foreign-born U.S. citizens, when electronically verified, receives an initial non-confirmation.

Nonetheless, legislators in many states have proposed making the Basic Pilot program mandatory for employers operating in the state. As noted, this provision in the Hazelton ordinance has been enjoined.

In Illinois, state legislators have taken a different approach. Responding to the statistics on inaccuracy of the data, and on employer misuse of the Basic Pilot program, the 2007 Illinois legislature enacted HB 1744 (820 ILCS 55/12). The law forbids Illinois employers, unless they are required to do so under federal law, from taking part in the Basic Pilot or other electronic verification programs until SSA and DHS databases are capable of making more accurate determinations.

The law further provides that employers who do take part in the Basic Pilot or Electronic Employment Verification programs must follow the program rules and must safeguard private employee information given to them in the I-9 process and use it only to confirm employment eligibility of new employees.

A worker whose employer has violated the statute may make a complaint to the state Department of Labor, which can bring a legal action on the workers' behalf. Court orders to comply with the law, as well as actual damages and penalties, can be awarded. Read the new law at: <http://www.ilga.gov/legislation/publicacts/95/PDF/095-0138.pdf>

Try Instead:

FIVE: A state resolution or local ordinance in favor of comprehensive immigration reform.

Many states and local communities have passed resolutions that call for comprehensive immigration reform as a real solution to the problems that plague communities of low –wage and immigrant workers, and as a statement of our common humanity and opposition to hate crimes. These take several forms:

- Resolutions in favor of comprehensive immigration reform, as was just passed by the City of Lancaster, PA;
- Resolutions opposing the Minutemen and vigilantism, as was passed by San Francisco, CA;
- Ordinances clarifying that local police will not inquire about immigration status, as is the law in Seattle, WA; and
- Resolutions opposing the “enforcement only” approach of HR 4437, as was done in Columbus, OH.

Examples of such resolutions can be found on the webpage of the Fair Immigration Reform Movement, www.fairimmigration.org.

Recommended Alternative: Model State Labor Agency Policies Regarding Immigration Status

Anti-discrimination laws: State agencies responsible for enforcing anti-discrimination laws may adopt the following policy:

All workers, regardless of immigration status, are covered by state anti-discrimination employment laws, and are eligible for all remedies under the law unless explicitly prohibited by federal law.

1. The [Agency Name] will:
 - a. Investigate complaints of violations of the anti-discrimination in employment laws and file court actions to seek and collect back pay, compensatory and punitive damages, and all other appropriate remedies, including equitable relief. This shall be done without regard to the worker's immigration status, unless explicitly prohibited by federal law.
 - b. Investigate retaliation complaints and file court actions to collect back pay owed to any worker who was the victim of retaliation for having complained about unlawful discrimination, without regard to the worker's immigration status, unless explicitly prohibited by federal law.
2. The [Agency Name] will not ask a complainant or witness for their social security number (SSN) or other information that might lead to disclosing an individual's immigration status, will not ask workers about their immigration status and will not maintain information regarding workers' immigration status in their files.
3. During the course of court proceedings, the [Agency Name] will oppose efforts of any party to discover a complainant's or witnesses' immigration status by seeking a protective order or other similar relief.
4. In the rare occasion that [Agency Name] must know the complainant's immigration status, it will keep that status confidential, and will have a policy of nondisclosure to third parties (including to other state or federal agencies), unless otherwise required by federal law.
5. If a party raises the issue of an employee's immigration status in the course of proceedings, the party must show that the evidence is more probative than prejudicial, and that it obtained such evidence in compliance to 8 CFR § 274a.2(b)(1)(vii).
6. [Agency Name] will train its staff (including intake officers, investigators, attorneys, and other relevant staff) on this policy and will work closely with community-based organizations to conduct this training.
7. [Agency Name] will make reasonable efforts to work closely with community-based organizations to conduct outreach and education to the immigrant community on this policy.

Wage and hour laws: State agencies responsible for enforcing wage and hour laws may adopt the same policy, except the first paragraph should read:

All workers, regardless of immigration status, are covered by state wage and hour laws, and are eligible for all remedies under the law unless explicitly prohibited by federal law.

1. The [Agency Name] will:
 - a. Investigate complaints of violations of the wage and hour laws and file court actions to seek and collect unpaid wages and all other remedies authorized under state law without regard to the worker's immigration status, unless explicitly prohibited by federal law.
 - b. Investigate retaliation complaints and file court actions to collect back pay owed to any worker who was the victim of retaliation for having complained about unpaid wages, without regard to the worker's immigration status unless explicitly prohibited by federal law.

Occupational safety and health laws: State agencies responsible for enforcing occupational safety and health laws may also adopt the same policy, except the first paragraph should read:

All workers, regardless of immigration status, are covered by state occupational safety and health, and are eligible for all remedies under the law unless explicitly prohibited by federal law.

1. The [Agency Name] will:
 - a. Investigate complaints of violations of the occupational safety and health laws and file court actions to enforce the law without regard to the worker's immigration status unless explicitly prohibited by federal law.
 - b. Investigate retaliation complaints [if state law includes an anti-retaliation provision] and file court actions to collect back pay owed to any worker who was the victim of retaliation for having complained about unpaid wages without regard to the worker's immigration status unless explicitly prohibited by federal law.

Workers' compensation: State agencies responsible for enforcing workers' compensation laws should adopt the following policy:

The [Agency Name] is responsible for providing workers with medical care and wage replacement when an injury or an occupational disease prevents them from doing their job. The agency has and will continue to do all that without regard to the worker's immigration status.

1. The [Agency Name] will provide medical expenses, wage replacement and all other benefits and remedies authorized under state law to all workers regardless of immigration status unless explicitly prohibited by federal law..
2. The [Agency Name] will not ask injured workers or their witnesses for their social security number (SSN) or other information that might lead to disclosing an individual's immigration status, and will not ask injured workers or their witnesses about their immigration status and will not maintain information regarding immigration status in their files.
3. Worker's immigration status is not relevant to determine eligibility for medical expenses or wage replacement.
4. During the course of court proceedings, the [Agency Name] will oppose efforts of any party to discover an injured worker's or witnesses' immigration status by seeking a protective order or other similar relief.
5. In the rare occasion that [Agency Name] must know the injured worker's or witnesses' immigration status, it will keep that status confidential, and will have a policy of nondisclosure to third parties (including to other state or federal agencies), unless otherwise required by federal law.
6. If a party raises the issue of an injured worker's or witnesses' immigration status in the course of proceedings, the party must show that the evidence is more probative than prejudicial, and that it obtained such evidence in compliance to 8 CFR § 274a.2(b)(1)(vii).
7. [Agency Name] will train its staff (including intake officers, investigators, attorneys, and other relevant staff) on this policy and will work closely with community-based organizations to conduct this training.
8. [Agency Name] will make reasonable efforts to work closely with community-based organizations to conduct outreach and education to the immigrant community on this policy.

Recommended Alternative: Draft Law or Executive Order Preventing Local Enforcement of Immigration Law

PURPOSE AND POLICY STATEMENT

WHEREAS, immigrants, who live and work in **[insert location]** contribute to our community. Over **X%** of the residents of **[insert location]** were classified as foreign-born in the 2000 census.

WHEREAS, immigrants work in some of the lowest-paid and highest risk jobs in the community and are frequently subject to abuse.

WHEREAS, all too often, low-road contractors rely on employees fear about the immigration consequences of dealing with government agents to prevent them from speaking out about abuses on the job.

WHEREAS, the cooperation of all members of the community, regardless of immigration status, is essential to law enforcement.

WHEREAS there is a need for a clear statement of policy to provide guidance to county employees and to promote the safety and health of all community members.

WHEREAS preserving the confidentiality of certain information is integral to the operation of County government.

This order/ ordinance supercedes all conflicting policies, ordinances, rules, procedures and practices.

DEFINITIONS

"Citizenship, immigration, or residency status": All matters regarding questions of citizenship of the United States or any other country, questions of authority from the Department of Homeland Security to reside or otherwise be present in the United States, and the time or manner of a person's entry into the United States. The use in this order of the term "residency" shall not mean street address or location of residence in county or elsewhere.

"[geographic unit] agency": Any and each entity directly controlled by the **[geographic unit]**.

"[geographic unit] agents": Any and each employee, including those who work in public safety, employed directly by the **[geographic unit]**.

"Confidential information": Any information obtained and maintained by a **[geographic unit]** agency relating to an individual's sexual orientation, status as a victim of domestic violence, status as a victim of sexual assault, status as a crime witness, receipt of public assistance, or immigration status, and shall include all information contained in any individual's income tax records.

"General [geographic unit] services": All services except those specifically listed as public safety services.

"Illegal activity": Unlawful, criminal activity but shall not include mere status as an undocumented immigrant.

"Immigrant": Any person who is not a citizen or a national of the United States.

"Law enforcement entities": Police, probation, sheriff's office, **OTHER?**

"Public safety services": Police and fire departments, Emergency Medical Service (EMS) authorities, **[geographic unit]** Attorney's office.

"Undocumented immigrant": A noncitizen who does not have lawful immigration status, in violation of federal civil immigration laws.

Section 1. [geographic unit] SERVICES

(A) **[geographic unit]** agents shall not inquire into the immigration status of any individual, nor shall **[geographic unit]** agents enforce federal civil immigration laws.

(B) **[geographic unit]** agents shall follow general county, state, and federal guidelines to assess eligibility for services. A **[geographic unit]** agent shall not inquire about a person's immigration status unless: (1) such person's immigration status is necessary for the determination of program, service or benefit eligibility or the provision of city services; or (2) such agent is required by law to inquire about an individual's immigration status.

(C) The presentation of a photo identity document issued by the person's country of origin, such as a foreign driver's license, passport, or *matricula consular* (consulate-issued document) shall be accepted and shall not subject the individual to a higher level of scrutiny or different treatment than if the person had provided a **X** State driver's license. *This paragraph does not apply to I-9 forms.*

Section 2. LAW ENFORCEMENT

(A) Unless otherwise required by law or court order, **[geographic unit]** agents shall refrain from the enforcement of federal immigration laws. No county agents, including agents of law enforcement entities, shall use county monies, resources, or personnel solely for the purpose of detecting or apprehending persons whose only violation of law is or may be a civil immigration violation.

(B) Police officers are exempted from the above limitations, with respect to a person whom the officer has reasonable suspicion to believe: (1) has been convicted of a felony criminal law violation; (2) was deported or left the United States after the conviction; and (3) is again present in the United States.

(C) County agents shall not single out individuals for legal scrutiny or enforcement activity based solely on their country of origin, religion, ethnicity or immigration status.

Section 3. VICTIM AND WITNESS PROTECTION

(A) It shall be the policy of public safety services departments not to inquire about the immigration status of crime victims, witnesses, or others who call or approach county agents seeking assistance.

(B) A **[geographic unit]** agent who provides public safety services shall not request specific documents for the sole purpose of determining an individual's civil immigration status. However, if offered by the individual and not specifically requested by the agent, it is permissible to rely on immigration documents only to establish that individual's identity in response to a general request for identification.

Section 4. CONFIDENTIALITY OF INFORMATION

(A) No **[geographic unit]** officer or employee shall disclose confidential information, unless:

- (1) Such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or legal guardian; or
- (2) Such disclosure is required by law; or
- (3) Such disclosure is to another city officer or employee and is necessary to fulfill the purpose or achieve the mission of any **[geographic unit]** agency; or
- (4) In the case of confidential information other than information relating to immigration status, such disclosure is necessary to fulfill the purpose or achieve the mission of any **[geographic unit]** agency; or
- (5) In the case of information relating to immigration status, (a) the dissemination of such information is necessary to apprehend a person suspected of engaging in illegal activity, or (b) such disclosure is necessary in furtherance of an investigation.

Employment

- **National Employment Law Project (NELP)** [Immigration Regulation and Worker Rights - A Power Point Presentation](#)
- **NELP** [Public Hearing on New Hampshire SB 407 before the New Hampshire House, Criminal Justice and Public Safety Committee Statement of Amy Sugimori, National Employment Law Project](#)
- **NILC** [Why States and Localities Should Not Require Participation in the Basic Pilot Program](#)
- **Mexican American Legal Defense (MALDEF)** [Talking Points on Business, Employment and Contract Provisions in anti-immigrant ordinances](#)
- [Transcript of a July 2006 Hearing of the Pennsylvania House Republican Policy Committee](#). Focus on testimony of Art Read, an advocate for migrant and temporary workers.

Benefits/Health

- **National Council of LaRaza (NCLR)** [Documentation Requirements Relating to Health for Immigrant Communities](#)
- **NCLR** [Studies Show that Undocumented Immigrants Contribute to the National and Local Economy - They are Far From a Drain on Public Resources](#)
- **National Immigration Law Center (NILC)** [Overview of Immigrant Eligibility to Federal Programs](#)
- **NILC** [Most State Proposals to Restrict Benefits to Immigrants Failed in 2005](#)
- **NILC** [Paying Their Way and Then Some: Facts About the Contributions of Immigrants to Economic Growth and Public Investment](#)
- **Nebraska Appleseed** [Explanation of Immigrants Rights to Public Benefits in Nebraska](#)

Day Labor Hiring Sites

- **NCLR** [Statement in favor of day labor hiring site in Herndon, VA](#)
- **NELP** [Drafting Day Labor Legislation: A Guide for Organizers and Activists](#)

English Only

- **NCLR** [English Only "Fact Check"](#)
- **NCLR** [Sample Testimony on English Only Ordinances](#)
- [MALDEF Talking Points on English Only](#)

General

- **NCLR** [Talking Points re: state legislation seeking to restrict benefits, require local police to enforce immigration law, restrict access to K-12 education, and restrict access to driver's licenses](#)
- **NCLR** [Talking Points for proposal to limit access to services and require local police officers to engage in immigration enforcement](#)
- **NCLR** [Common Myths About Undocumented Immigrants](#)
- **NCSL** [The Tension Between Federal Immigration Policy and State Law - Power Point Presentation](#)

Housing

- **MALDEF** [Talking Points on Do Not Rent Laws](#)
- **NCLR** [Talking Points on Do Not Rent Laws](#)

Local Law Enforcement

• **NCLR [State and Local Police Enforcement of Immigration Law - Toolkit](#)** This toolkit provides advocates with resources to help oppose attempts to deputize state and local police to enforce federal immigration laws. It includes sample talking points, letters to the editor, op eds, coalition letters, and more.

• **[Major Cities Chiefs Statement on Immigration, June 8, 2006](#)**

• **National Immigration Forum (NIF) [State and Local Enforcement of Immigration Laws Resources](#)**

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Page 27

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